IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 18169 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAVAZKHAN ALIAS JAKIRBHAI MAHAMMADBHAI GHORI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 18169 of 2003

MR HR PRAJAPATI for Petitioner No. 1

RULE SERVED for Respondent No. 1,2

MR. L.R. PUJARI, LD. AGP for Respondent No. 2-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 11/02/2004

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner has been challenging the order of preventive detention dated 30-10-2003 bearing No. SUP/TPS/ATK/1/2003, under section 3 (2) of the Prevention of Black Marketing and

Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as the 'PBM Act') passed by respondent No.2; and prays for setting aside the order and setting the petitioner at liberty forthwith.

2. The grounds of detention suggests that the petitioner is doing the business of sale of kerosene and has been found to indulge in illegalities in the storage and sale of kerosene and thereby committed breach of clause 3 of the notification of 1993 relating to the Gujarat Kerosene (Control on the consumption and fixation of maximum price); that on information inquiry/inspection was made on 17-7-2003 at the premises of the petitioner in respect of the business of kerosene and it was found during the inspection that the petitioner was found unauthorisedly possess stock of blue kerosene and it was also revealed that he was purchasing, storing and selling the same; that no board indicating stock and the rate was displayed at the business premises; that at the time of inspection one Matador No. GJ-2-T-9532 was found unloading blue kerosene at the business premises of the petitioner; that no record relating to the account for conducting the business was found and the petitioner was found to have stocked the kerosene without any permission / license unauthorisedly which was meant for distribution to the people at a fixed rate.

3. The stock recovered from the business premises of the petitioner was 2417 liters of blue kerosene, 437 liters of white kerosene, 13 barrels for storing kerosene, over & above the matador No. GJ-2-T-9532; that the sample was taken from blue kerosene seized and sent to the Forensic Science Laboratory (FSL) for analysis & report and after the report of FSL the detention order came to be issued and the petitioner has been taken in detention on 30-10-2003.

It is further submitted that nothing further was required to be done when the petitioner gave a confessional statement on 17-7-2003 and that the detention order could have bene passed much earlier rather than waiting for the report of the FSL. Thus the impugned order of detention is challenged mainly on the ground of delay.

It is submitted by Mr. L.R. Pujari, leaned AGP that, after the seizure of the kerosene, sample was sent to FSL and the report dated 24-9-2003 was received on 9-10-2003 and it was after confirmation as regards the adulteration in kerosene and the second statement of the petitioner recorded on 15-10-2003, the impugned detention

order came to be passed on 30-10-2003.

4. Challenging the impugned order of detention it has been submitted by Mr. H.R. Prajapati for the petitioner that the impugned order of detention is liable to the quashed and set aside on the ground of delay, besides the other grounds stated in the petition. It is contended that, in the instant case upon the information the concerned department inspected the business premises of the petitioner on 17-7-2003; that on the same day petitioner gave confessional statement, that the FSL report dated 24-9-2003 was received on 9-10-2003 and the detention order came to be passed on 30-10-2003.

5. It is not disputed that on information the premises of the petitioner was inspected on 17-7-2003 and the stock of blue kerosene as well as white kerosene was seized. The report of the FSL as regards the adulteration in kerosene was received on 9-10-2003.

In the first statement dated 17-7-2003 the petitioner has confessed the ownership of 247 liters of blue kerosene which was stored in his shop; that he has not applied for obtaining licence nor he has been granted any licence for doing business of blue kerosene; that blue kerosene was purchased at Rs.12/-, per liter and sold at Rs.14/per liter . It is also confessed by the petitioner that he does not maintain any record or accounts as regards purchase and sale of blue kerosene and what was recovered form his shop was blue kerosene.

6. Mr. Prajapati has placed reliance on the decision in case of NANDLAL NANALAL TAILEE rendered in Special Civil Application No. 9230 of 2002 (Coram: P.B. Majmudar, J). Dealing with the contention of delay in passing the detention order, it has been observed that, " so far as the delay in passing the detention order is concerned, it is not in dispute that the date of detention in question is 12-5-2002. On the said day, certain quantity of kerosene was seized from the petitioner. On that very day, the statement of the petitioner was also taken, and at the time of inspection, the petitioner has already admitted before the authority that he has illegally obtained the quantity of such kerosene and he had also admitted the fact that there is presence of blue colour in the aforesaid white kerosene.

7. In para-11 of the affidavit in reply the delay is sought to be explained as follows :-

" ..... As such FSL analysis report dated

24-9-2003 was received on 9-10-2003. The investigation was in progress. The last statement of the petitioner was taken on 15-10-2003 and the detention order was passed on 30-10-2003 by the detaining authority i.e. 15 days after subjectively satisfying himself of having sufficient material. "

8. As seen above, the petitioner in his first confessional statement on 17-7-2003 had admitted doing business in blue kerosene without licence. The petitioner also admitted in his confessional statement that he used to purchase blue kerosene at Rs.12/- per liter and sell it at Rs.14/-, per liter; that no accounts for business of kerosene is maintained. In fact there was no reason for the authority to wait till the report of the FSL was received on 9-10-2003 since adulteration in the kerosene was not the only the ground of detention as can be seen from the grounds of detention referred to above. Even without waiting for the report from FSL the detention order could and should have been passed as the object of passing order of detention is to see that the person may be immediately prevented from committing such illegalities and for preventing him from indulging in blackmarketing, immediate action ought to have bene taken by the authorities concerned. The delay in passing the order of detention would frustrate the entire object of passing the order of detention . This aspect has been lost sight of by the authority concerned by not passing the order of detention taking the petitioner in detention immediately. In my opinion, since the explanation in para-11 of the affidavit in reply is not satisfactory, the impugned order of detention suffers from the vice of delay and require to be quashed, since there was no justification for waiting til the report of the FSL was received. As far as the second statement recorded on 15-10-2003 is concerned, it appears that the same is with a view to bridge the gap between 17-7-2003 and detention order dated 30-10-2003. Under the circumstances the impugned order of detention is liable to be quashed and set aside.

9. In the result, the petition is granted and allowed accordingly. The order of detention dated 30-10-2003 bearing No: SUP/TPS/ATK/1/2003 (Annexure-A) passed by respondent no.2 under the provisions of Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980, is set aside and quashed. The detenu Nivazkhan @ Jakirbhai Mahammadbhai Ghori is ordered to be set at liberty forthwith, if not required in any other case. Rule made absolute. Direct

service permitted.

Dt: 11-2-2004 (N.G. Nandi, J)